

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7593

Petition of Telephone Operating Company of Vermont)
LLC, d/b/a FairPoint Communications, for a waiver of)
Board Rule 7.615(B)(1))

Order entered: 4/30/2010

ORDER DENYING WAIVER

INTRODUCTION

On October 21, 2009, Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications ("FairPoint"), filed a request for a waiver of the requirement of Public Service Board ("Board") Rule 7.615(B)(1) that the due date of a bill shall be 25 days plus an additional five days when the carrier (1) mails its bills from a location outside the State and (2) also requires customers to mail payment to a location outside the State. The Department of Public Service ("Department") opposes FairPoint's request.

The Board denies FairPoint's request for a waiver of the requirement that companies that send bills from out of Vermont and require that payments also be sent out of state allow customers an additional five days to pay bills. FairPoint has not demonstrated that such a modification, which reduces the time available to Vermont ratepayers to send in payment, is reasonable and appropriate.

BACKGROUND

Board Rule 7.615(B) provides as follows:

(B) Due date of bills.

(1) The due date of a bill shall not be sooner than 25 days after the bill is mailed or otherwise delivered to the customer. An additional five days shall be added where the carrier mails its bills from a location outside the State and requires customers to mail payment to a location outside the State.

(2) A postmarked bill is considered to have been mailed on the date it is postmarked.

(3) If the due date for payment falls on a Saturday, Sunday, legal holiday, or any other day when the carrier's offices are not open for business, the carrier shall extend the due date to the next business day.

(4) When a carrier provides a customer with multiple notices or contacts that contain different due dates for the same customer account, payment of that account is due on the latest date.

FairPoint requests we waive the provision in Rule 7.615(B)(1) that requires a carrier that both mails bills from outside the State and requires payments to be sent out-of-state add five days to the otherwise applicable due date. FairPoint asserts that application of the existing rule has proven to be a source of customer confusion. According to FairPoint, it bills customers on a 30-day cycle. Since it mails its bills from outside Vermont, the due date on a bill would be 30 days after the bill is generated; if the due date fell on a weekend, holiday, or other day that FairPoint's offices were closed, this due date would be further extended until the next business day (under Rule 7.615(B)(3)), for a total payment period of 31 to 33 days. This means that, if a customer pays the bill on the due date, it is possible that FairPoint would not post the payment to the account before the next bill is generated. As a result, that bill would show a past-due balance, even though the customer had actually paid by the requested due date.

FairPoint contends that waiver of the additional five days would not adversely affect customers. FairPoint argues that the bills are mailed from Maine and that the amount of delay in Vermont customers receiving their bills from Maine is at most one day. Thus, FairPoint asserts that customers would still have an adequate opportunity to review and pay their bills. FairPoint also states that to modify its billing system, which is set up to accommodate billing in all three northern New England states, would be unduly expensive.

The Department questions FairPoint's assertions that bills sent from Maine would arrive consistently within one day. More broadly, the Department expresses concerns about FairPoint's existing billing practices and performance, following the cutover to its own systems that occurred at the end of January 2009. The Department argues that until FairPoint can demonstrate a consistent system of receiving, processing, and posting payments, the Board should deny FairPoint's request. The Department also raises concerns about how the proposed waiver could

affect customers facing the possibility of disconnection or fees for late payment (which FairPoint does not presently charge). The Department asserts that the waiver would shorten the time for customers to avoid such disconnection or charges. In response to FairPoint's comments about the expense associated with billing-system changes, the Department maintains that FairPoint should have known of the requirements of the Board's Rules and designed its systems accordingly.

In Reply Comments, FairPoint argues that the broader billing issues that the Department highlights do not relate to the specific issue for which a waiver is sought. FairPoint asserts that, although it has had billing issues, it is working to resolve these. But FairPoint contends that other billing-system issues are irrelevant; instead, it cites to customer complaints about bills that do not reflect past payments, which it maintains show customer confusion and dissatisfaction and demonstrate why the waiver should be granted.

DISCUSSION

We deny FairPoint's requested waiver, primarily because we cannot conclude that the limited reduction in customer confusion cited by FairPoint outweighs the interests of consumers in having a reasonable time to pay their bills. The Board's rules define what constitutes a reasonable period for paying bills by mandating that all telecommunications carriers allow customers 25 days. This period could be extended by up to several days if the due date falls on a weekend, holiday, or other day when FairPoint's offices are closed. In addition, as FairPoint notes, the rules also mandate a further five-day extension if a company, such as FairPoint, mails its bills from out of Vermont and requires that customers send the payment out of the State. This additional period is intended to reflect the fact that Vermont customers may incur a delay in receiving a bill when it is mailed from outside Vermont; they also are likely to need to mail their payments earlier when sending to a non-Vermont address if they want to meet the due date on the bill. FairPoint correctly points out that mailing to and from out-of-state locations may not add a full five days. However, there is little question that the more distant mailing and payment locations have the potential to add some time. FairPoint's proposal would deny customers this time.

It is also not clear that granting the waiver will eliminate the possibility that a customer's next bill will not reflect the payments received by the due date. The Department observes that FairPoint does not always post payments immediately. Thus if a customer pays in a timely manner, the customer's bill may still show a past-due amount. This possibility is increased when the due date falls on a weekend or holiday, thus extending the normal payment deadline. Also, customers whose payment is received just after a 25-day due date may face the same issue. The waiver may reduce the number of customers who have some confusion, but it is unlikely to eliminate it.

Moreover, FairPoint's need for a waiver rests in large part on the manner in which FairPoint has chosen to design its billing systems, distribute bills, and accept payments. FairPoint argues that it would be expensive to modify the billing system to accommodate the needs of Vermont. However, at the time FairPoint sought to acquire the assets of Verizon Vermont, it had a duty to be fully aware of the Board's Rule, which in this case adds five days to the due date if a company both mails bills from outside Vermont and requires that payments also be sent to such locations. Knowing this requirement, it should have designed its systems to ensure compliance.

We note that, as it relates to design of FairPoint's systems, the present request is similar to the request that we considered in Docket 7506, in which FairPoint asked the Board for a waiver of the Performance Assurance Plan based upon the fact that the systems it designed could not produce the information necessary to fulfill its obligations under that Plan. We denied that request, stating that:

it is clear that, relative to the conditions imposed by this Board, the obligation to ensure compliance rested with FairPoint, in which case it had the responsibility to convey appropriate design specifications to its contractor and then oversee the contractor's performance so that FairPoint could comply with the standards. From the standpoint of compliance with our conditions, the responsibility to exercise control over the outcome rests with FairPoint.¹

The same observation applies here. FairPoint chose how it would structure its billing arrangements, deciding to mail bills from outside Vermont and require payments outside

1. Docket 7506, Order of 8/6/09 at 10.

Vermont as well, knowing that under the Board's Rules this would require a five-day extension to the due date. It also selected how its billing system would operate. We find no basis for waiving the Board's Rules when the need arises from FairPoint's own decisions that were made with full knowledge of the Board's requirements.

So ORDERED.

Dated at Montpelier, Vermont, this 30th day of April, 2010.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: April 30, 2010

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.